UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

THOMAS CARROLL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No.
STANDARD INSURANCE COMPANY,	)	
	)	
	)	
Serve At:	)	
Standard Insurance Company	)	
c/o Director of Insurance	)	**JURY TRIAL DEMANDED**
301 W. High Street, Room 530	)	
Jefferson City, MO 65101	)	
	)	
Defendant.	)	

COMPLAINT

COMES NOW, Plaintiff Thomas Carroll, by and through counsel, and for his Complaint against Defendant states as follows:

1. At all times herein mentioned Plaintiff, Thomas Carroll, is and was an adult resident of Ste. Genevieve County, State of Missouri.

2. At all times herein mentioned, Plaintiff was acting within the scope of his employment as a firefighter with the Mid-County Fire Protection District.

3. Defendant, Standard Insurance Company (“Standard”) is an Oregon corporation in good standing and licensed to do business in the state of Missouri.

4. Jurisdiction is proper in this court pursuant to 28 U.S.C.A. § 1332, as diversity jurisdiction exists between Plaintiff and Defendant and the amount in controversy exceeds the jurisdictional amount of $75,000.

5. Venue is proper in this court pursuant to 28 U.S.C.A. § 1391(a)(2), as Plaintiff resides in the State of Missouri and in this judicial district, and a substantial part of the events giving rise to Plaintiff's claim occurred within this judicial district.

COUNT I
BREACH OF CONTRACT

COMES NOW Plaintiff, and for his cause of action against Standard, states and alleges as follows:

1. Plaintiff is and was an insured under a disability policy issued by Defendant Standard through his employer, the Mid-County Fire Protection District, as of January 1, 2010 and at all times relevant to this complaint.

2. On or about June 18, 2014 Plaintiff underwent a total left knee arthroplasty.

3. On or about December 15, 2014, Plaintiff attempted to return to employment with the Mid-County Fire Protection District, however due to significant impairment to his left knee, he was unable to complete all the necessary functions of his job duties as a firefighter.

4. On or about February 2, 2015 Plaintiff filed a claim seeking long-term disability benefits under the aforementioned policy issued by Defendant.

5. On or about May 8, 2015, Defendant sent Plaintiff correspondence notifying Plaintiff that his long term disability claim had been approved, that he was disabled as of June 14, 2014, and he would receive payment backdated to December 11, 2014.

6. On or about June 1, 2015 Defendant sent Plaintiff additional correspondence notifying Plaintiff that his long-term disability ("LTD") payments would be limited to twelve (12) months, and would end on March 23, 2016, because Plaintiff's disability "may be caused or contributed to by musculoskeletal and connective tissue disorder, such as arthritis."

7. After receiving the June 1, 2015 correspondence, Plaintiff's physicians submitted additional medical records for consideration.

8. After receiving additional medical records from Plaintiff's physicians, on September 22, 2016, Defendant sent Plaintiff correspondence notifying Plaintiff the decision regarding the limitation and closing of Plaintiff's LTD claim would be submitted to the Administrative Review Unit.

9. On or about November 10, 2016, Defendant sent Plaintiff correspondence notifying Plaintiff the administrative review was complete and Plaintiff was not entitled to LTD benefits after March 23, 2016, as Plaintiff did not prove that he was disabled due to a condition other than a musculoskeletal and connective tissue disorder.

10. This correspondence further provided that Plaintiff had exhausted his one (1) opportunity for administrative review.

11. Defendant's LTD policy specifically provides that the twelve (12) month limitation period for musculoskeletal and connective tissue disorders **will not apply to "osteopathies."** (emphasis added)

12. As a result of the policies failure to define "osteopathies", the policy language relied upon by Defendant to assert the limitation is vague, confusing, and ambiguous.

13. There is no language contained in the policy issued by Defendant that defines the term "osteopathies."

14. A contract is ambiguous when it appears from the four corners of the contract that the terms are susceptible of more than one meaning so that reasonable persons may fairly and honestly differ in their construction of the terms.

15. When a contract is ambiguous, the Court may resort to parol evidence to determine the contract's meaning.

16. Ambiguous contract terms are construed against the drafter.

17. The Miriam Webster Dictionary defines "osteopathies" as "a disease of bone."

18. Pursuant to the ordinary meaning of the term osteopathies, Plaintiff's medical condition is not subject to the twelve-month limitation.

19. Plaintiff complied with allof the applicable terms, conditions and provisions of the policies issued by Defendant Standard, including exhausting all Defendant's internal appeals procedures, and is entitled to continued benefits under the policy.

20. Defendant's failure to pay the long-term benefits in compliance with their own policy, is in breach of its contractual obligations under the aforesaid policy or policies of insurance, to the damage of Plaintiff.

21. As a result of Defendant's breach of contract, Plaintiff has been made to suffer a loss of monthly economic benefits, mental anguish, and pain and suffering.

WHEREFORE, Plaintiff Thomas Carroll, prays for judgment against Defendant Standard Insurance, an Oregon corporation, in an amount that is fair and reasonable in excess of $75,000, together with her costs herein expended and for such other and further relief as this court deems just and proper under the circumstances.

COUNT II
VEXATIOUS REFUSAL TO PAY

COMES NOW Plaintiff, Thomas Carroll, by and through counsel, and for her cause of action against Defendant, states as follows:

19. Plaintiff hereby restates and reincorporates into Count II all facts and allegations contained in Count I, Paragraphs 1 through 18, of Plaintiff's Complaint.

20. Plaintiff's records of medical treatment, which were provided to Defendant, demonstrate that he is permanently disabled as defined by Defendant's policy. Despite these facts, Defendant has refused to adequately resolve Plaintiff's claim and continue his benefits, and failed and refused to provide a purported reason for refusing to disperse further long-term benefit payments.

21. The aforesaid conduct of Defendant, in attempting to avoid appropriate compensation of Plaintiff for his disability, was and is without reasonable cause or excuse

22. Defendant's refusal to pay Plaintiff long-term disability benefits under the aforesaid policy of insurance was and is vexatious and without reason or excuse, in violation of § 375.420 RSMo.; thus Plaintiff is entitled to further damages of twenty percent (20%) of the first One Thousand Five Hundred Dollars ($1,500.00) due and owing Plaintiff and ten percent (10%) of the remaining amount due and owing Plaintiff, plus reasonable attorney's fees.

WHEREFORE, Plaintiff, Thomas Carroll, respectfully requests the Court to enter judgment in his favor and against Defendant for such damages as will fairly and adequately compensate Plaintiff, for interest on said amount, including pre-judgment interest, as well as for his reasonable costs of Court fees. Plaintiff further asks the Court to enter judgment against Defendants for vexatious penalties of twenty percent (20%) of the first One Thousand Five Hundred Dollars ($1,500.00) due and owing Plaintiff and ten percent (10%) of the remaining amount due and owing Plaintiff, for his reasonable attorney's fees to date, for further costs incurred herein and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

LAW OFFICES OF RICK BARRY, P.C.

By: /s/ Rick Barry_____________________

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